

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**JULY 31, 1996**

**NOTICE**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-2662**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

**In re the Marriage of:**

**DOLORES DEMIR,**

**Petitioner-Respondent,**

**v.**

**AHMET DEMIR,**

**Respondent-Appellant.**

**APPEAL from an order of the circuit court for Walworth County:**

**JAMES H. CARLSON, Judge.** *Affirmed in part; reversed in part and cause remanded with directions.*

**ANDERSON, P.J.** Ahmet Demir appeals from an order finding him in contempt and requiring him to pay Dolores Demir \$61,975.05 in child support arrearages. We conclude that the trial court correctly determined that Ahmet was delinquent in his payments of child support. We also conclude that Ahmet is not entitled to credit for payments which benefitted his children,

but circumvented the original child support order. Accordingly, we affirm in part and reverse in part the trial court.

Ahmet and Dolores were divorced in Illinois in 1983, and Ahmet was ordered to pay child support for their two children in the amount of \$600 per month through the Clerk of Courts of Cook County, Illinois. From 1983 through 1996, Ahmet failed to make the support payments through the clerk of courts; rather, he insists, he provided for his children via an implied agreement made with Dolores.

After the divorce, Dolores and the children moved to Delavan Lake, where Ahmet owned a home. She and the children lived in the home for approximately ten years and Ahmet made the mortgage and utility payments. Ahmet occasionally purchased groceries and vehicles for his family. Although he made occasional direct payments to his wife and two children "when they needed money," he failed to make the \$600 monthly child support payment.

Dolores filed a complaint with the Circuit Court of Walworth County based upon Ahmet's nonpayment of child support as ordered by the divorce settlement. Ahmet responded that he owed nothing to Dolores because Dolores and the children lived rent-free, without paying for utilities, sanitation service, vehicles, occasional groceries and clothes totaling more than \$100,000. He believed that a "new contract" existed between the parties to provide for

child support according to a means that was different than those articulated in the Illinois child support order.

The trial court held Ahmet in contempt for failing to pay child support. The court concluded that Ahmet owed the following: \$50,225.05 in arrearages, \$69,125.05 less \$18,900 in credit for monies Ahmet previously paid; \$10,250 due under a note and mortgage made under part of the divorce judgment; and \$1500 in attorney's fees. The court granted Ahmet thirty days to purge his contempt by paying Dolores the total sum of \$61,975.05. Ahmet appeals.

Chapter 767, STATS., provides the court the law when interpreting a matter such as the one before this court. The application of a statute to a particular set of facts is a question of law, which we review de novo. *DOR v. Sentry Fin.*, 161 Wis.2d 902, 910, 469 N.W.2d 235, 238 (Ct. App. 1991).

It is undisputed that at the time of trial, Ahmet was delinquent in his child support payments, and we affirm the trial court on this point. However, we reverse the trial court's decision to grant Ahmet credit in the amount of \$18,900, for two reasons. First, § 767.32(1m), STATS., provides that "the court may not revise the amount of child support, maintenance payments or family support payments due ... prior to the date that notice of the action is given to the respondent, except to correct previous errors in calculation." Second, in *Douglas County Child Support Enforcement Unit v. Fischer*, 200 Wis.2d 807, 816, 547 N.W.2d 801, 805 (Ct. App. 1996), the court ruled that payees can enforce the strict requirements of a child support order even if the

payees have accepted previous payments which were not paid according to the original court order. Dolores never agreed to Ahmet's alternative arrangement. Ahmet requested many times that Dolores send some type of verification to the court in the hopes of changing the child support arrangement, but she refused. He verbally harassed Dolores and his children in order to change the order, but they refused. Ahmet never sought modification of the child support order through the courts.

Ahmet testified that he lived at the Delavan house almost every weekend, holiday and vacation in order to work on and improve the property. He also testified that he would have kept the house for himself if Dolores did not live there with the children. Obviously, he would have paid the mortgage and utility payments regardless of whether or not Dolores and the children lived in the Delavan house.

Ahmet profited greatly from the Delavan house, which Dolores and the children kept clean and presentable, and is attempting to circumvent his child support responsibilities by claiming that the mortgage and utility payments were sufficient for credit against his arrearages. We do not agree. His child support payments were set to be paid to the Clerk of Courts in Cook County, Illinois. If Ahmet wished to change the original order, he could have sought a modification of the original order. He failed to even attempt making such arrangements.

*Douglas County* is clear. Payments must be made according to the original court order. *Douglas County* mandates a reversal of the trial court's

decision to grant Ahmet any credit in child support arrearages. We conclude that Ahmet owes \$80,875.05 (\$69,125.05 + \$10,250 + \$1500) in arrearages, and we direct the trial court to enforce a judgment in the amount of \$80,875.05 to be paid in a manner set forth by the trial court.

Costs are denied to both parties.

*By the Court.*—Order affirmed in part; reversed in part and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.